



ENFORCEMENT OF ENVIRONMENTAL LAWS IN INDIA: A CRITICAL APPRAISAL

**DR.ASHIM KUMAR NATHANIEL, ASSOCIATE PROFESSOR,
CHEMISTRY DEPARTMENT,
CHRIST CHURCH COLLEGE, KANPUR.**

nathanielsri@gmail.com

ABSTRACT

In India, concept of environment preservation is as old as the nation itself. Since the beginning of our civilization men and women have constantly strived to protect and preserve the mother earth. This ancient tradition of environment preservation even reflects in our modern-day India. India is the member of almost all the conventions, declarations, Conferences and Protocols dedicated to the protection of Environment Law. The Indian judicial system and legislative branch work hard to create sound laws supported by case law. India has also passed new environmental regulations and has been continuously updating them to reflect the changing environment. In India, environmental protection laws abound, but their implementation has been far from ideal. The constitutional obligation and other environmental laws must be enforced effectively and efficiently. According to the Constitution, it is the responsibility of the State to conserve the environment. The judiciary has played a substantial and admirable creative role. Numerous Public Interest Litigations against numerous industries for failing to implement proper pollution control have been filed before the Supreme Court of India in accordance with the Constitution's requirements.

KEYWORDS: Pollutant, Environment, Atmosphere, Policy, Water Pollution etc.

INTRODUCTION

Over the years, the Indian Governments have had a prodigious pressure on them to maintain a steady balance between the country's economic necessities and developmental strategies which has proved to be an arduous task. In order to achieve this, a colossal mistake seemed to be the brushing off of environment related issues to a dusty backseat. This is specifically true for the early years of Independence where there was no precise environment protection legislation or policies as such. The protection of environment is now a global issue and is not just isolated to one nation; the collective approach of the international community over the years has helped in the development of laws and policies relating to the environment. In 1972, the United Nations Conference on Human Environment was held in Stockholm which distinctly elucidated and

conceptualized, environment and the factors deteriorating it, for the first time. Since then constant efforts have been made at a major scale, both internationally and in India, to integrate society, environment, development and law for the welfare of humankind.

MEANING OF ENVIRONMENT

The word environment originated from the old French word 'environer' which means 'surround', 'encase', and 'encircle'. Environment refers to the overall set of circumstances or surroundings in which living things—including people, animals, and plants—exist. Environment refers to the actual regions of the globe, and man has a huge impact on these regions. The environment contains a connecting arrangement of physical, organic, and social components which are interlinked exclusively as well as on the whole in different ways.

ENVIRONMENTAL LAWS IN INDIA

Three key organizations—the Ministry of Environment, the Ministry of Forests, the Ministry of Climate Change, the Central Pollution Control Board at the federal level, and the State Pollution Control Boards at the state level—adopt, carry out, and enforce environmental legislation in India.

The main environmental laws in India are, the:

1. Air (Prevention and Control of Pollution) Act 1981 (Air Act).
2. Environment (Protection) Act 1986 (EP Act)
3. Wild Life (Protection) Act 1972.
4. Forest (Conservation) Act 1980.
5. Public Liability Insurance Act 1991.
6. Biological Diversity Act 2002.
7. National Green Tribunal Act 2010.

After drugs, counterfeit goods, and human trafficking, environmental crimes are perhaps the fourth most lucrative form of criminal activity. The rate of expansion of these crimes is astounding. Comparatively speaking, criminal activity that involves the exploitation of natural resources and biological variety poses little risk to criminals.

Most countries do not recognize the environmental offences as a priority which results in the lack of appropriate and proportionate response. Environmental crimes impact the already fragile planet hence compromising the future health and wellbeing on an unprecedented scale as well as the present sustainable development goals needless to say the acceleration of climate change. Industrialization shouldn't mean genocide but human good. Then, time and again our Indian Judiciary has been implementing the principles of Environment Law in such a fashion that an Indian Jurisprudence can be devised for aiding the legislators to implement statutes dedicated to Environmental Law as per Indian conditions.

Our Indian environmental laws majorly focus on areas involving air pollution and quality, water pollution and quality, sustainable development, waste management, precautionary and preventive measures, contaminant clean-up, safety in dumping, and dealing with chemical elements dumping, and public trust. However, their implementation entails far more complex issues having interplay of social, political, and economic factors in addressing the serious environmental repercussions.

All these environmental rights and principles have been behind the development of environmental jurisprudence and judicial adjudication in the country. This existing framework is invoked in imparting the role of the various public and private enterprises and determining their constitutional, statutory and common law application and performance.

TYPES OF ENVIRONMENTAL CRIMES

These crimes are considered under the organized criminal activities all around the world. Environmental crimes which are also known as green-collar crimes constitute the fourth largest crime. These crimes are fundamentally driven by the aim of gaining material and financial benefits:

1. Poaching.
2. Illegal trade of wildlife.
3. Trade of unregulated and illegal products, for financial and material gains.
4. Unreported fishing.
5. Illegal logging.

Other non-exhaustive lists of environmental crimes include littering, waste disposal, oil spills, dumping into water bodies, wetlands destruction, improper handling of pesticides, burning, wastage, improper removal of asbestos, smuggling chemicals, etc. Further, they can also be classified as per the nature of these crimes, such as cognizable, non-cognizable, compoundable, "non-compoundable, bailable, and non-bailable.

THE CONSTITUTIONAL PROTECTION OF ENVIRONMENT

In 1976 the term environment was introduced in the constitution by the 42nd amendment which provides an obligation to both state and its citizens to protect and preserve the environment. Article 48(A) states that: safeguarding forests and wildlife, improving environmental conditions, and protecting In addition to preserving the nation's woods and wildlife, the state must work to maintain and improve the environment.

Additionally, this amendment added article 51 A(g), which states that it is the responsibility of every Indian citizen to preserve and enhance the natural environment, including forests, lakes, rivers, and wildlife, as well as to show compassion for all living things.

The parliament inserted these article with an intention to sensitize the citizens about their duty incorporated in article 51A of the constitution. Among other things, this means that a citizen must have compassion for all living things and safeguard and enhance the natural environment, which includes woods, lakes, rivers,

and wild life. In the definition of environment provided by the Environment (Protection) Act of 1986, the legislative aim and spirit described in Articles 48A and 51A(g) of the Constitution are taken into consideration.

It is true that Part III of the Constitution relating to Fundamental Rights does not specifically provide any Article specifically to the Environment or protection per se. Constitutional provisions related to fundamental rights are invoked in the cases related environmental problems.

PENAL PROVISIONS FOR ENVIRONMENTAL PROTECTION

If we look into the history of legal provisions available for the control of environmental pollution Indian penal code, 1860 provides its first attempted to curb the environmental related offences generally water and atmosphere through criminal sanctions. Public health and safety related offenses are covered in Sections 268A to 194A of Chapter XIV of the Indian Penal Code. The sole purpose of Chapter XIV is to make those acts punishable which pollute environment or threatens the life of the people.

Section 277 of IPC provides: - Anyone who intentionally taints or fouls any public spring or reservoir, making it unfit for the usual use to which it is put, will be punished by imprisonment of either description for a duration that may not exceed three months.

Section 278 of Indian penal code provides: - A punishment of up to 500 rupees may be imposed on anyone who intentionally taints an area's atmosphere in a way that is harmful to the health of nearby residents, people conducting business, or people using a public pathway.

The above two provisions are related to environmental protection as it penalizes the air and water pollution, however it has failed to achieve the objective because of the technicality of the laws needs to be satisfied every aspect of the offence as mentioned in the penal provision. The above-mentioned provisions do not provide criminal justices.

This is also a sad-reality of our society that the people who violate the very environment we live in can walk freely even after causing dangerous health issues to the people at large and damaging the natural environment. Though the IPC provides protection of the environment but it has failed to create deterrence in the society. The amount 500/ Rs. as a fine is very low for those commit such crimes.

THE LAW OF TORTS AND ENVIRONMENTAL POLLUTION

Although the law of torts does not specifically deal with the environmental laws and pollution control but still, the principle evolved out of certain aspect of laws. In India most of the cases of torts comes under four major categories:

1. NUISANCE:

That which annoys and disturbs one in possession of his property, rendering its ordinary use or occupation physically uncomfortable to him. Public or private nuisances both exist. Therefore, any

annoyance brought on by odour, noise, fumes, gas, heat, smoke, germs, vibrations, etc. might serve as the basis for a nuisance action.

2. NEGLIGENCE:

The failure to act in a way that a reasonable person, guided by the regular factors that govern human affairs, would act in, or the act of acting in a way that a reasonable and sensible person would not act in. In other words, a specific tort that can be used as the basis for a common law action to stop environmental degradation. When some damage, loss or inconvenience is caused due to lack of care which had to be taken then it amounts to be negligence.

3. TRESPASS:

Doing of unlawful act or of lawful act in unlawful manner to injury of another's person or property. In the environmental related cases tort of trespass constitutes a deliberate attempt of damage to plaintiff's property.

4. STRICT LIABILITY:

Liability without fault or in situations when the defendant cannot be defended due to lack of care, carelessness, good faith, or knowledge. This tort has significant relevance in the matters related to environmental pollution.

REMEDIES UNDER LAW OF TORTS

In law of torts two remedies available;

1. Damages
2. Injunction

1. DAMAGES: Any person who has suffered loss, harm, or injury—whether to his person, property, or rights—as a result of another's illegal act, negligence, or carelessness may seek monetary compensation or indemnification from the judicial system. The continuous efforts of Supreme Court for awarding when the environmental harm carrying on hazardous or inherently dangerous activity.

2. INJUNCTION: A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law. Tort law has traditionally provided a blunt instrument for remedying harms to the environment. Nevertheless, general tort law theories have been successfully applied to remedy numerous types of harm to the environment.

ROLE OF NATIONAL GREEN TRIBUNAL

As the burden on Supreme Court increased and cases started to pile up the apex court time to time expressed the urgent need for an alternative forum to deal with the environmental cases without any delay. In *M. C Mehta v. Union of India*, the supreme court first time indicted the need for separate alternative forums to deal with the environmental cases on a regional basis with two experts from environmental science research group and a professional judge.

It gives effects to the global declarations on environment and provides a specialized forum for effective and quick disposal of environmental cases. The parliament enacted the national green tribunal act in 2010; it confers NGT the power to hear complaints as well as appeals under various environmental laws. While issuing the order, it adheres to the widely accepted philosophy of sustainable development.

According to the act, the tribunal may, by order, offer relief and compensation to those who have suffered from pollution and other environmental damages as a result of the passage of this act include accidents occurring while handling potentially dangerous substances or environmental restoration in the regions as the tribunal may deem appropriate. This action was also taken in reaction to the Supreme Court's ruling that Article 21 of the Constitution's right to life includes the right to a healthy environment.

CONCLUSION

The laws related to environment have evolved significantly in last couple of decades as various international and national efforts and through social activism with strategic environmental initiatives. But despite these efforts the crimes related to environment is still not in control and according to the reports it's the 4th largest area of crimes in the world. The situation is much serious than it is being taken.

There is so much legislation in place that attempt to deal with environmental issues. However, this has only led to more ambiguity and difficulty in their implementation. What we need is a strong integrated system that would provide a holistic unified approach and effective results. With all the established principles, the judicial implementation mechanisms have witnessed mixed success. Apart from complex external factors, certain institutionalized internal weaknesses affect the implementation process like how the courts have been inconsistent while deploying implementation mechanisms and that their orders require more robust legal reasoning and they need to integrate better with the existing regulatory framework. It is time for the nation to enact harsh criminal penalties that anyone who violate the laws about environmental degradation would have to bear. The cases related to pollution and environmental related problems are not seen as a criminal offence hence the offenders are not punished and the mere amount of compensation is not enough to create deterrence in the society that will significantly drop the pollution and case related to environment.

REFERENCES:

1. Bare Act. The Indian Penal Code 1860 Retrieved from https://www.iitk.ac.in/wc/data/IPC_186045.pdf

2. MC Mehta Vs Union of India 1983 SCC 471
3. MC Mehta Vs Union of India 1987 SCR (1) 819
4. Gaur, K D, 2009. The Indian Penal Code, (Fourth Edition). Universal Law Publication. Page 394, 395.
5. Bare Act. The National Green Tribunals Act, 2010 Retrieved from https://greentribunal.gov.in/sites/default/files/act_rules/National_Green_Tribunal_Act,_2010.pdf
6. Sapre, Akshay, 2010. Ratanlal & Dhirajlal The Law of Torts, 28h Edition. Lexis Nexis. Page 197, 271, 496, 655.
7. Environmental Studies - Ecosystem Retrieved from https://www.tutorialspoint.com/environmental_studies/environmental_studies_environment.htm#:~:text=The%20word%20%E2%80%98environment%E2%80%99%20is%20derived%20from%20the%20old,plants%20live%
8. Shastri, Prof Satish C, 2012. Environmental Law, 4th Edition. Eastern Book Company. Page 13, 20, 21, 25.
9. Singh, Mahendra P, 2013. V.N Shukla's Constitution of India, 12th Edition. Eastern Book Company. Page 384, 387, 388.
10. Pandey, Dr JN, (2014). Constitutional Law of India. (51st Edition) Central Law Agency. Page 458, 460